

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

RE: Application of Antrim Wind, LLC for Certificate of site and)
facility to construct up to 28.8 MW of wind electric generation in)
the town of Antrim, Hillsborough County, New Hampshire and)
operate the same (SEC Docket 2015-02).)

PARTIALLY ASSENTED-TO MOTION TO EXPAND THE SCHEDULE

NOW COMES the Wind Action Group by and through its undersigned representative, and Lorraine Carey Block, and Richard Block (the “Parties”), all intervenors in the above referenced matter, who respectfully request that the Presiding Officer of the New Hampshire Site Evaluation Committee (“Committee” or “SEC”) expand the procedural schedule for Docket 2015-02 by at least one-month. In support thereof, the Parties state as follows:

A. BACKGROUND

On October 2, 2015, Antrim Wind, LLC (“Applicant” or “AWE”) filed an Application with the Committee for approval to construct and operate 9 Siemens SWT-3.2-113 wind turbines, each rated at 3.2 MW for a total nameplate capacity of 28.8 MW. A substation and other associated infrastructure are also described (“Project”). The Project is proposed to be located in the Town of Antrim on the Tuttle Hill ridgeline spanning southwestward to the northeastern slope of Willard Mountain (“Site”). On October 20, 2015, the Chairman of the Committee appointed a Subcommittee in this Docket. (*RSA 162-H:4-a*) On November 18, 2015, the Subcommittee reviewed the Application and determined that it contained sufficient information for the Subcommittee to carry out the purposes of RSA 162-H. An Order accepting the Application as complete was issued on December 1, 2015.

Effective December 16, 2015, the SEC completed a lengthy process to update its rules by readopting with amendments the NH CODE OF ADMIN. RULES Site 100, Site 200, and Site 300. The Committee issued a request to the Applicant on December 28, 2015, to review the amended rules

and notify the SEC whether any additional information was required for the Application to comply with the rules. AWE responded in a December 29, 2015 letter wherein it asserted supplemental information would be forthcoming on or around February 19, 2016. Updated files were electronically distributed to the parties on February 19, 2016. A second supplemental filing was made by AWE on March 3, 2016.

On February 25, 2016, a prehearing conference was held during which a preliminary procedural schedule was developed and officially established by the Committee in its March 25, 2016 order. *Procedural Schedule Order March 25, 2016* The pre-hearing conference report also detailed the desire of the participants to schedule a second site visit to the Project area including at least 16 points of interest. *Report of Prehearing Conference and Recommended Procedural Schedule March 2, 2016*

The Parties reviewed the supplemental information contained in AWE's application and on March 10, 2016 filed a motion with the Committee wherein the Parties identified at least four areas where they found the application failed to comply with the new SEC rules. The motion requested *inter alia* that the Committee order AWE to bring its application into compliance with the SEC's rules and also for the Committee to consider an enlargement of the procedural schedule so the deficiencies in the Application could be addressed. AWE issued an objection to the motion.

On April 15, 2016, AWE filed a motion seeking protective treatment of certain documents. *Applicant's Motion for Protective Order and Confidential Treatment April 15, 2016* AWE has withheld access to the documents and affirmed it will object to any intervenor having access to the documents other than Counsel for the Public, even if an intervenor agrees to adhere to rules established by the Committee for handling confidential documents. *Id. Footnote 1* The Windaction Group and the Allen/Levesque Intervenors filed separate objections to AWE's motion on April 25, 2016.

The Committee has not issued a response to the two pending motions nor has it provided any further information on whether a second site visit will be arranged.

B. LEGAL STANDARD

SEC Rule 202.02(d)(1) provides that “In any matter before the committee or any subcommittee, the presiding officer, or a hearing officer designated by the presiding officer, shall hear and decide procedural matters that are before the committee, including the following (1) Procedural schedules for proceedings.”

C. ARGUMENT

1. March 10, 2016 Motion: Rules

The purpose of the SEC’s rulemaking for wind energy systems was to establish criteria or standards that would “ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process.” *RSA 162-H:10-a I* By establishing such standards, the Committee provides applicants, their experts, and others engaged in the proceeding with the legal certainty for what is required in order to comply with the regulations. Absent the Committee’s response to the Parties’ March 10 motion, the Parties must assume that the rules, as adopted, will not be enforced despite their clear meaning. In that case, the Parties will be required to waste time developing testimony and cross-examination to show the deficiencies in AWE’s application which are clearly evident and would otherwise not exist but for the fact that AWE did not adhere to the rules. Doing so would be contrary to the intent of the Committee’s rulemaking process and will surely impede the orderly and prompt conduct of the proceedings.

2. April 15, 2016 Motion: Protective Order

AWE has refused to provide confidential business information to any intervenor to this proceeding except for Counsel for the Public. Windaction has requested access to the confidential information in order to conduct a meaningful review of AWE's financial condition and the economic viability of the proposed project. Windaction has the requisite knowledge of the New England renewable energy market needed to conduct such a review. Further the Committee has not imposed limits on Windaction regarding topics it can address in this proceeding. Without an order by the Committee on this important matter, AWE's documentation will remain off-limits to the Parties and, according to our knowledge and belief, will likely go unexamined in this proceeding. RSA 162-H:16 IV(a) requires that the Committee make a finding as to whether the Applicant has "adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate." The Parties question whether the Committee could make such a determination without a full vetting of the documents now being withheld by AWE.

If the Committee were to issue an order at this late date, the procedural schedule does not permit Windaction, or the Parties, the time needed to fully develop a meaningful response to the confidential documentation should the Committee agree to make them available.

3. Second Site Walk

During the February 25, 2016 pre-hearing conference, there was considerable discussion regarding arranging a second site visit to observe important points of interest not included during the prior visit. The following sensitive locations were suggested as places to visit:

Bald Mountain
Goodhue Hill
Pitcher Mountain
Meadow Marsh
Robb Reservoir

Franklin Pierce Lake
Windsor Mountain
Loveren Mill Road (2 locations)
Farmstead Road
Bacon Ledge
Hedgehog Mountain
High Five
Berwick residence Reed Carr Road
Back Road to Gregg Lake (Craig Road?)
Salmon Brook Road (Longgood/Schaefer residences)
Report of Prehearing Conference and Recommended Procedural Schedule March 2, 2016

The Parties, and others, had expected a second site visit to occur in the months following February 25, 2016 but the Committee has provided no feedback.

D. CONCLUSION

The Committee's responses to the pending issues will have a direct bearing on how the Parties, and others in this Docket, formulate their arguments before the Committee. The Parties were informed by Attorney Iacopino on May 10, 2016 that responses to the pending motions were being prepared but nothing has been issued as of this writing. *See EXHIBIT A attached* It was our sincere hope to avoid a request for extension of time, but at this point, we firmly believe that even longer delays are likely to occur in this Docket if the time is not granted now.

The Parties conferred with the other intervenors to this case. At the time of this writing, Patrick Leary, Bruce Berwick, Barbara Berwick, Janice Longgood on behalf of the abutting intervenor group and Fr. Fred Ward and the Meteorologists support the motion. Co-intervenors Charles Levesque and Mary Allen support the motion with a recommendation that the second site visit be scheduled on or before June 10, 2016. Counsel for the Public supports the motion relative to the pending motions before the Committee. The Harris Center neither supports nor opposes the motion. The Town of Antrim Selectboard was unable to respond to the motion in the timeframe. AWE, Benjamin Pratt, John Griffin, Wes Enman and the International Brotherhood of Electrical Workers oppose the motion.

WHEREFORE, in view of the foregoing, the Parties respectfully request that this honorable
Committee:

- A. Grant a one-month extension to the procedural schedule for filing prefiled testimony by the intervenors and extend all other deadlines in accordance with the one-month period;
- B. Issue responses to the pending motions as soon as possible, so as not to further impact the schedule;
- C. Arrange for a second site visit in May 2016;
- D. Grant such further relief as it deems equitable and appropriate.

Dated this day of May 19, 2016

By:



Lisa Linowes, The Windaction Group



Lorraine Carey Block, Intervenor



Richard Block, Intervenor

cc: Parties to Docket 2015-02

EXHIBIT A

From: Michael J. Iacopino [mailto:miacopino@brennanlenehan.com]
Sent: Tuesday, May 10, 2016 5:08 PM
To: Lisa Linowes <lisa@linowes.com>
Cc: 'Monroe, Pamela' <Pamela.Monroe@sec.nh.gov>; 'Mary Maloney - Counsel for Public' <mary.maloney@doj.nh.gov>
Subject: RE: Antrim Wind: pending motions and site walk
Lisa,

The orders are being drafted. I don't have a date for an additional site visit yet and that will be arranged through Pam.

Best,

Mike

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From: Lisa Linowes [<mailto:lisa@linowes.com>]
Sent: Tuesday, May 10, 2016 2:19 PM
To: Michael J. Iacopino
Cc: 'Monroe, Pamela'; 'Mary Maloney - Counsel for Public'
Subject: Antrim Wind: pending motions and site walk

Hi Mike – do you have any idea when the Committee might respond to the two pending motions and also arrange for the site walk discussed at the prehearing conference? At this point, I'm considering a motion to enlarge the time.

Thanks.

--Lisa

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